

Public Chapter 244

HOUSE BILL NO. 1964

By Representatives Ronnie Cole, Rinks, Phelan, Fitzhugh, Garrett, Pinion, Maddox, Hargrove, Westmoreland, Kisber, McDaniel, McKee, Gunnels, Givens, Walley, Bowers, Roach, Davis, Brenda Turner and Mr. Speaker Naifeh

Substituted for: Senate Bill No. 1973

By Senator Herron

AN ACT to enact the Foreign Foods Disclosure Act of 1997.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Foreign Foods Disclosure Act of 1997."

SECTION 2. As used in this act, unless the context otherwise requires:

(a) "Director" means the Director of the Division of Consumer Affairs;

(b) "Manufacturer" means any person who manufactures, assembles or packages articles containing food of foreign origin. The term "manufacturer" shall not include wholesalers that repack fresh produce into smaller containers for sale to retail stores or retailers that repack fresh produce into tray-ready packs for sale to consumers.

(c) "Person" means a natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.

(d) "Food" means any nourishing substance intended to be eaten by human beings.

SECTION 3. The consumer affairs division of the Department of Commerce and Insurance shall administer the provisions of this act.

SECTION 4. It is unlawful for any manufacturer to sell any article containing food of foreign origin to a retail or wholesale establishment in Tennessee or for distribution in Tennessee if such article is not marked in accordance with the requirements of 19 U.S.C. §1304.

SECTION 5. In addition to any other remedies, the director is authorized to apply to the Chancery Court of Davidson County, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of this act, irrespective of whether or not there exists an adequate remedy at law, without the necessity of posting a bond.

SECTION 6. The director may seek and the court may impose a maximum civil penalty for a violation of this act of not more than ten thousand dollars (\$10,000). For purposes of this section, each unmarked or improperly marked article shall constitute a separate violation of this act.

SECTION 7.

(a) Any person who manufactures, assembles or packages articles containing food who has suffered or will suffer an ascertainable loss as a result of a violation of this act may commence a civil action against any manufacturer who is alleged to have violated or to be in violation of the provisions of this act.

(b) The action may be brought in a court of competent jurisdiction in the county where any alleged sale took place, is taking place, or is about to take place, or in the county in which the alleged violator resides, has its principal place of business, conducts, transacts, or has transacted business, or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(c) If the court finds that the violation was a willful or knowing violation, the court shall award three (3) times the actual damages sustained and provide such other relief as it considers necessary and proper.

(d) A person commencing a civil action under this section shall serve a copy of the action on the director. In any action under this section, the director, if not a party, may intervene as a matter of right at any time in the proceeding.

(e) Without regard to any other remedy or relief to which a person is entitled, anyone affected by a violation of this act may bring an action to obtain a declaratory judgment that the act or practice violates the provisions of this act and to enjoin the person who has violated, is violating, or who is otherwise likely to violate this act; provided that such action shall not be filed or shall not be continued if the director has commenced or intervened in a proceeding pursuant to Section 5.

(f) The court, in issuing any final order in any action brought pursuant to this section, shall award costs of litigation (including reasonable attorney fees) to the prevailing party. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Tennessee Rules of Civil Procedure.

SECTION 8. Any action commenced pursuant to this part shall be brought within one (1) year from discovery of the alleged sale of an improperly marked article.

SECTION 9. The provisions of this part shall be construed in accordance with 19 U.S.C §1304 and the regulations promulgated and rulings and decision made thereunder.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. Nothing in this bill shall alter or amend the applicability to a wholesale or retail grocer of 19 U.S.C. §1304 and any regulations promulgated thereunder.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.